Office-Supreme Court, U.S.
FILED
AUG 6 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-2010

In the Supreme Court of the United States

October Term, 1982

BERTHOLD R. KUELLMAR and
ELIZABETH S. KUELLMAR,

Petitioners,

vs.

VILLAGE OF BROOKFIELD,
A MUNICIPAL CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

RICHARD J. BILLIK
BILLIK AND BILLIK, LTD.
Suite 700
11 South LaSalle Street
Chicago, Illinois 60603
(312) 332-7875
Attorney for Respondent

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

QUESTION PRESENTED

1. Whether this Honorable Court should entertain Petitioners' Writ of Certiorari based on a purported claim of a denial of due process when an order for demolition is entered by the Trial Court after considering substantial and detailed proof to support demolition and after viewing the premises by agreement of both parties to assist the Court in understanding the evidence admitted at trial?

TABLE OF CONTENTS

PAGE

Question Presented i

Statement of the Case 1

Reasons for Not Granting Petitioners' Writ of Certiorari 3

Argument 4

Conclusion 6

Appendices:

Appendix A—Order of Trial Court, "Decree of Demolition", (R. 59) ..... App. 1

Appendix B—Transcript of Trial pp. 55 and 56 App. 3

TABLE OF AUTHORITIES CITED

Cases

Devon Bank v. Department of Transportation, 95 Ill. App.3d 690, 420 N.E.2d 605 (1981) 5

People v. Gilbert, 68 Ill.2d 252, 369 N.E.2d 849 (1977) 5, 6

Rushing v. Camp, 19 Ill. App.3d 435, 311 N.E.2d 757 (1974) 5

Statutes and Ordinances

Illinois Revised Statutes, Chapter 24, Section 11-31-1 .. 2

Code of Ordinances of the Village of Brookfield, Chapter 6, Article IV, Section 6-62 *et seq.* 2

In the
Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-2010

BERTHOLD R. KUELLMAR and
ELIZABETH S. KUELLMAR,

Petitioners,

vs.

VILLAGE OF BROOKFIELD,
A MUNICIPAL CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

Petitioners, Berthold R. Kuellmar and Elizabeth S. Kuellmar, hereinafter referred to as "Petitioners", are seeking to appeal an order which denied their Petition for leave to appeal this action to the Illinois Supreme Court and which permits the Respondent, Village of Brookfield, hereinafter referred to as "Village", to arrange for the demolishment of the building on the premises owned by Petitioners because it was proven at trial to be dangerous and unsafe to the public.

The Village instituted this demolition action pursuant to Chapter 24, Illinois Revised Statutes, Section 11-31-1 and Chapter 6, Code of Ordinances of the Village of Brookfield, Article IV, Section 6-62 *et seq.*

The evidence presented at trial included the testimony of a number of witnesses and the submission of trial exhibits, including photographs of the premises. Based upon this evidence presented at trial, the Trial Court found the building to be unsafe and dangerous to the public and upheld the Village's right to demolish it.

During the non-jury trial, the Trial Court, pursuant to the suggestion of Respondent's counsel and concurrence of Petitioners' trial counsel, visited the premises in question in order to assist the Court in understanding the evidence in the case. (Trial T. pgs. 48-49, 55-56).

Under the terms of the Trial Court's Decree of Demolition entered in this action, the Court, after reciting that it heard the testimony and viewed the premises, explicitly stated that the Village "has fully sustained the material allegations of the Complaint and that the building located on the above premises is dangerous and in an unsafe condition", and the Trial Court further noted that its findings in the action are not based upon the viewing but on "consideration of testimony of witnesses and the exhibits introduced at trial". (Record on Appeal pgs. 59-60).

The Appellate Court of Illinois affirmed the Trial Court's ruling and held that based upon the record, there is abundant and detailed proof to support the Judgment of demolition. (Slip Op. p. 12). On April 12, 1983, the Supreme Court of Illinois denied Petitioners' request for leave to appeal the action. Petitioners have now filed their pending Petition for a Writ of Certiorari in the Supreme Court of the United States.

REASONS FOR NOT GRANTING PETITIONERS' WRIT OF CERTIORARI

This Court should deny Petitioners' request for Writ of Certiorari because the Trial Court, Appellate Court of Illinois and Supreme Court of Illinois gave full consideration to the issues and decided the same correctly. The Judgment of demolition entered in this action is clearly supported by the evidence presented at trial in this action and the Trial Court and the reviewing Courts relied solely upon this evidence to declare the building at issue to be unsafe and dangerous to the public.

Moreover, Petitioners have failed to set forth in their Petition sufficient facts to claim a constitutional issue which would warrant this Court's attention. Petitioners were vigorously represented by counsel who had concurred in the visual inspection of the premises by the Trial Court, upon which Petitioners now purportedly base their Petition for Writ of Certiorari. The record firmly establishes that Petitioners were not deprived of due process under the law and that the evidence overwhelmingly supports the Trial Court's Judgment of demolition.

ARGUMENT

Petitioners have failed to set forth sufficient facts or other indicia in their Petition for a Writ of Certiorari to raise a purported constitutional issue for this Honorable Court to review and consider.

Based solely on the Trial Court's visual inspection, Petitioners contend generally that they were allegedly denied due process of law under the Fourteenth Amendment of the United States Constitution. Petitioners have failed, however, to state specifically how their constitutional rights were allegedly harmed or prejudiced by the Trial Court's inspection of the site, especially in view of the overwhelming evidence introduced at trial in favor of demolition and their trial counsel's concurrence in the inspection.

Petitioners have simply ignored the court record in an attempt to construct a feeble due process claim. Initially, Petitioners fail to address the fact that their trial counsel concurred in and approved the visual inspection of the premises by the Trial Court. Moreover, the trial record is replete with evidence supporting the ruling that the building is dangerous and unsafe to the public and should be demolished. The Trial Court heard substantial testimony at trial from a number of expert witnesses, including, the Village's Building Inspector, the Village's Fire Chief, a Real Estate Appraiser, a State Registered Sanitarian, a Registered Architect and a Structural Engineer, and viewed photographs of the premises. The evidence proved the specific allegations of dangerous and unsafe conditions existing in the building which are contained in the instant complaint filed by the Village. Addi-

tional evidence established that the building, itself, has no value and the cost of making the building habitable would be well in excess of sixty thousand dollars. (Trial T. pgs. 52-54, 79).

In fact, the Illinois Appellate Court even noted that Petitioners' counsel had conceded at oral argument that the evidence was overwhelmingly in favor of demolition and stated:

> Finally, Defendants contend that Plaintiff has failed to sustain the burden of proof required by a judgment of demolition. *In oral argument before this court, however, counsel for appellant (Petitioners) has conceded that absent the trial court's inspection, there was sufficient evidence in the record to sustain the instant judgment.* This concession by counsel notwithstanding, we find that on this record there is abundant and detailed proof to support the judgment of demolition. (Slip Op. p. 12, Emphasis Supplied).

The Appellate Court also found that the record clearly establishes that the Trial Judge only considered admissible evidence in reaching his decision and that the inspection may well have assisted the Judge in better understanding the evidence admitted at trial, particularly the photographic evidence portraying the premises. (Slip Op. p. 9).

It has generally been held that the Court may exercise its discretion to view evidence firsthand in order to understand the issues and apply the evidence which is admitted. *Devon Bank* v. *Department of Transportation*, 95 Ill. App. 3d 690, 420 N.E.2d 605 (1981). *People* v. *Gilbert*, 68 Ill.2d 252, 369 N.E.2d 849 (1977); *Rushing* v. *Camp*, 19 Ill. App. 3d 435; 311 N.E.2d 757 (1974). The presumption that the Trial Court considered only competent evidence in reaching his decision cannot be challenged where there is an

abundance of competent evidence apparent in the record upon which the Trial Judge based his decision. *People* v. *Gilbert, supra.*

The legal authority cited by Petitioners is inapplicable and easily distinguishable from the instant action. The cases do not support Petitioners' purported claim because the instant record clearly establishes that the inspection of the premises occurred with the parties' knowledge and approval, that the Judgment entered herein was based solely on evidence presented at trial, and that Petitioners had ample opportunity to defend themselves at trial by confronting adverse evidence and presenting their own arguments.

CONCLUSION

It is respectfully submitted that based upon the foregoing, Petitioners' purported claim of a denial of due process is clearly without merit and their Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

.....

Richard J. Billik
Billik & Billik, Ltd.
11 S. La Salle, Suite 700
Chicago, Illinois 60603
(312) 332-7875
Attorney for Respondent

APPENDIX

APPENDIX A

STATE OF ILLINOIS	)	
	) SS	
COUNTY OF COOK	)	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FOURTH DISTRICT

VILLAGE OF BROOKFIELD, a Municipal Corporation, Plaintiff,	)	
V.	)	NO. 81 M4-1859
	)	In Chancery
BERTHOLD R. KUELLMAR and ELIZABETH S. KUELLMAR, et al., Defendants.	)	

DECREE OF DEMOLITION

THIS CAUSE COMING ON to be heard on the verified complaint of the Plaintiff, VILLAGE OF BROOKFIELD, a Municipal Corporation, by RICHARD J. BILLIK, its attorney, Defendants, BERTHOLD R. KUELLMAR and ELIZABETH S. KUELLMAR, by GUY J. BACCI, of the Law Firm of WEINSTEIN & BACCI, LTD., and the Court having heard the testimony of the witnesses and personally viewing the premises, and after consideration of the testimony of the witnesses and the exhibits introduced in evidence, and the Court being fully advised in the premises FINDS:

That it has jurisdiction of the parties and the subject matter which is the premises located at 3620 Prairie Avenue, Brookfield, Illinois, and legally described as:

> Lots 11 and 12 in Block 14 in Grossdale, a Subdivision of the Southeast Quarter of Section 34, Township 39 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois

That the Plaintiff, VILLAGE OF BROOKFIELD, a Municipal Corporation, has fully sustained the material allegations of the complaint, and that the building located on the above premises is dangerous and in an unsafe condition.

WHEREFORE, IT IS HEREBY ORDERED THAT the Plaintiff, VILLAGE OF BROOKFIELD, a Municipal Corporation, be and is hereby authorized and directed to demolish the building on the aforesaid premises.

IT IS FURTHER ORDERED THAT the necessary costs and expenses of abating the nuisance by the said demolition of the building or structure be charged against the Defendant owners of the said premises, and that this matter be continued for the purpose of the VILLAGE OF BROOKFIELD, a Municipal Corporation, to ascertain the demolition costs to be incurred in abating the nuisance and for the further purpose of advising this Court of what attempts have been made to utilize Human or Family Services Departments to assist in the relocation of the owners.

IT IS FURTHER ORDERED THAT this Court reserve jurisdiction of this cause to carry out the terms of this Decree.

IT IS FURTHER ORDERED THAT this cause be continued to April 19, 1982 to determine the cost of the demolition of said building and the status of the owners occupancy of said premises.

ENTER: */s/ A. D. Mistretta*
JUDGE

RICHARD J. BILLIK
Attorney for Plaintiff
11 S. LaSalle St.
Chicago, Illinois 60603
(312) 332-7875

APPENDIX B

(After a discussion was had in chambers, outside the presence and hearing of the Court Reporter, the following proceedings were had:)

The Court: Back on the record.

As far as the discussion as to whether the Court will view the premises, I believe someone has some comments to make here.

Mr. Billik: I would like to renew my motion to assist the Court, that the Court view the premises to have a first-hand view of the testimony being brought out here and I would like to do it this afternoon if possible.

Mr. Bacci: For the record, as the attorney for the defendants, if it would assist the Court in its decision in this particular litigation, so be it.

The Court: Fine, let's agree to a time where we will all be there to view the premises. We are ten minutes away from it, is that correct?

Mr. Billik: On the outside, fifteen.

The Court: Off the record.

(After a discussion was had outside the record, the following proceedings were had:)

The Court: It's ten minutes of 1:00. We will be there at ten after 2:00. That should give us enough time to observe this, is that correct?

Mr. Bacci: Fine, Judge.

The Court: And we will start the hearing at 2:30.

(A luncheon recess was had.)